on this theory the Mississippi case seems erroneous; for while the railroad would be justified in calling in the plaintiff, the conductor subsequently was negligent in leaving and not summoning the rest of the crew to aid and protect him.

A second view may be taken that a conductor, not being as a rule so far from help or subject to such great perils, is not like a sea-captain, and that a passenger by entering a train does not come under a duty to assist him.[11] It must then follow that the railroad, having no justification, is liable for injuries resulting from inviting a passenger into danger, regardless of its subsequent diligence. Doubtless the railroad is placed in the difficult position of liability to the other passengers if passengers are not called to aid; while if they are summoned, the railroad is liable to the volunteers if they are injured. If this result seems overburdensome upon the carrier, an escape is presented by adopting the first view that a passenger is under duty to assist the conductor.

REQUISITES AND PROOF OF COMMON-LAW MARRIAGES. — From early times it has not always been clear what acts were necessary to the validity of a marriage.[1] According to early civil law the consent of the parties was sufficient,[2] but it seems doubtful whether under the early English common law[3] a marriage without a minister was valid.[4] In this country, however, many states have adopted the view that a marriage may be valid even without a ceremony before third parties.[5] The rule is usually stated to be that an agreement to be married henceforth, followed by cohabitation, constitutes the so-called common-law marriage.[6] But both on principle and authority it would seem that the agreement alone is sufficient to consummate a common-law marriage and that the subsequent cohabitation is important only as evidence of the agreement.[7]

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the ship by acts he was obliged to do in emergency, he is awarded no salvage. The Vrede, 1 Lush. Adm. 322. But if he acts beyond his duty he may recover. Newman *v.* Walters, 3 B. & P. 612; The Great Eastern, 24 Fed. Cas. No. 14,110; 2 PARSONS, SHIPPING AND ADMIRALTY, 268.

[11] The courts in Pittsburg, F. W. & C. Ry. Co. *v.* Hinds, cited in note 2, *supra*, and in the Mississippi case, seem to have considered that there was no duty to help the conductor.

[1] BRYCE, STUDIES IN HISTORY AND JURISPRUDENCE, 811 *et seq.*

[2] BRYCE, STUDIES IN HISTORY AND JURISPRUDENCE, 812.

[3] BRYCE, STUDIES IN HISTORY AND JURISPRUDENCE, 817–818; RODGERS, DOMESTIC RELATIONS, § 85.

[4] By statute in England a ceremony is now required. 26 Geo. II, c. 33. But it can be before a civil officer. 6 & 7 William IV, c. 85. In Scotland an agreement to be married henceforth is sufficient. Dalrymple *v.* Dalrymple, 2 Hag. Cons. 54.

[5] Shorten *v.* Judd, 60 Kan. 73, 55 Pac. 286; Hutchinson *v.* Hutchinson, 196 Ill. 432, 63 N. E. 1023; Chamberlain *v.* Chamberlain, 68 N. J. Eq. 414, 59 Atl. 813; Tartt *v.* Negus, 127 Ala. 301, 28 So. 713; *In re* Hulett's Estate, 66 Minn. 327, 69 N. W. 31. *Contra*, Dunbarton *v.* Franklin, 19 N. H. 257. Some states by statute have declared common-law marriages invalid. Morrill *v.* Palmer, 68 Vt. 1, 33 Atl. 829; see Com. *v.* Munson, 127 Mass. 459–460. Other states have declared marriage a contract, and in such states a contract is usually sufficient. State *v.* Bittick, 103 Mo. 183, 15 S. W. 325. It is generally held that statutes setting forth the ceremony for marriages are only directory, and even in these states common-law marriages are good. Renfrow *v.* Renfrow, 60 Kan. 277, 56 Pac. 534.

[6] See Shorten *v.* Judd, 60 Kan. 73–77, 55 Pac. 286–287.

[7] Thoren *v.* Attorney-General, 1 A. C. 686; Mathewson *v.* Phoenix Iron Foundry,

Moreover, it is clear on the authorities, in the states where formal solemnization is not necessary, that although there is no proof of an actual written or oral contract, the agreement necessary to the formation of a common-law marriage may be inferred solely from the conduct of the parties. There are four rather common situations where this is likely to occur. In one class of cases, the only evidence of the agreement is that the parties have lived together as husband and wife. The courts have usually held this to be evidence of an agreement from which the jury may find that there was a common-law marriage.[8] Since such evidence does not amount to proof of a verbal agreement, we have in these cases an instance where an implied agreement is sufficient.[9] In the second class of cases the parties have actually contracted a marriage [10] and lived together, but this marriage is void [11] because of some disability [12] unknown to both parties. After the removal of the disability a new agreement of some nature is necessary.[13] The parties ignorant of the existence and removal of the disability simply live on as before. In this situation it would seem on ordinary contract principles that there can be worked out a new agreement to be man and wife, none the less actual because implied in fact. All the elements of a contract would seem to be present. The cohabitation, without contrary evidence, is sufficient to prove that there exists the same matrimonial intent which the parties had when they originally attempted to contract a marriage.[14] Although the pair believe themselves to be already bound, each gives the performance of matrimonial duties in exchange and as the price for the like performance by the other party.[15] The situation would thus

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20 Fed. 281; see Dumaresly *v.* Fishly, 3 A. K. Marsh (Ky.) 368–370–372; see SCHOULER, DOMESTIC RELATIONS, §§ 25, 26; BISHOP, MARRIAGE, DIVORCE, AND SEPARATION, §§ 297–299. *Contra*, Lorimer *v.* Lorimer, 124 Mich. 631, 83 N. W. 609.

[8] Tartt *v.* Negus, 127 Ala. 301, 28 So. 713; Gall *v.* Gall, 114 N. Y. 109, 21 N. E. 106.

[9] Renfrow *v.* Renfrow, *supra*; Tartt *v.* Negus, *supra*; Thoren *v.* Attorney-General, *supra*.

[10] In such cases the first marriage can, of course, be either by ceremony or by mere agreement, where common-law marriages are good.

[11] Wilson *v.* Allen, 108 Ga. 275, 33 S. E. 975.

[12] The disability usually consists in one party having a spouse living and undivorced; but any disability, such as slavery, that makes the marriage absolutely void, would be sufficient. Renfrow *v.* Renfrow, *supra*.

[13] Edelstein *v.* Brown, 35 Tex. Civ. App. 625, 80 S. W. 1027.

[14] Renfrow *v.* Renfrow, *supra*; Land *v.* Land, 206 Ill. 288, 68 N. E. 1109.

[15] It is believed that the situation under discussion is analogous to the following hypothetical case. A. and B. enter into a bilateral agreement whereby A. promises to pay B. $500, and B. in exchange promises to do something which he is already bound to do, *i. e.*, at first as in the marriage case, (but for a different reason) there is no binding contract. Later A., as he had promised, pays B. the $500. It is submitted that this makes a binding contract, and that B. is now bound to A. to do that which he was already bound to do for another. Though not thinking he was entering into a new contract, A., when he paid over his $500, did give it in exchange for the performance of the other party. So after the disability each spouse gives his performance in exchange for the performance of the other party.

In WALD'S POLLOCK ON CONTRACTS, 3 ed., p. 3, and in ANSON ON CONTRACTS, 13 ed., p. 47, although this situation is not under discussion, there is language to the effect that there cannot be a contract unless the parties at the time intend to enter a legal relation. It is contended that this language, if intended to apply to a situation of this kind, is incorrect. See Yerkes *v.* Richards, 170 Pa. St. 346, 32 Atl. 1089; Bowker *v.* Harris, 30 Vt. 424.

appear the same in effect as that in the first class of cases. A third situation is where the parties marry, both knowing of an existing disability, or simply live together meretriciously. In such cases since matrimonial intent cannot be inferred from past conduct, the courts, before finding a valid marriage, properly require affirmative proof of mutual consent to marriage after the disability is removed.[16] A fourth class of cases is where only one party knew of the disability when the pair were first married. Some courts hold that the mere continuing of cohabitation after the disability is removed is insufficient evidence of the requisite agreement.[17] Other courts say the fraudulent party is estopped to show his lack of consent because of his wrong, and so find a subsequent agreement.[18] On the analogy of ordinary contract principles, it may be argued that there is a valid agreement as soon as the disability is removed, since there is apparent mutual consent which is ordinarily sufficient.[19]

In the light of the above discussion an interesting case recently decided in Illinois would seem incorrect. *People* v. *Shaw*, 102 N. E. 1031 (Ill.). The defendant married a woman in New York, neither knowing of a disability.[20] They moved to Illinois, where there was no disability, and continued to live as man and wife. The defendant then deserted this woman and married another, and was held not guilty of bigamy. As the evidence showed that neither party doubted the validity of the original ceremony in New York, there was real consent by both to be married when the parties lived in Illinois thinking themselves man and wife. It is submitted, therefore, that a common-law marriage was there contracted, and that the defendant was guilty of bigamy.[21]

COMPULSORY INTERCHANGE OF TRANSFERS BETWEEN INDEPENDENT STREET RAILWAY COMPANIES. — Having laid down the proposition that the legislature may enact regulations governing public service corporations,[1] the courts have but slowly blocked out the limitations of this power.[2] It is settled that the regulation must not be unreasonable.[3] But this term will throw little light on the subject until its meaning has been

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[16] There should clearly be no presumption that their meretricious intent was changed based merely on their continued cohabitation. Harbeck *v.* Harbeck, 102 N. Y. 714, 7 N. E. 408.

[17] Collins *v.* Voorhees, 47 N. J. Eq. 555, 22 Atl. 1054; Hunt's Appeal, 86 Pa. St. 294.

[18] Matter of Wells, 123 App. Div. 79.

[19] Robinson *v.* Ruprecht, 191 Ill. 424, 61 N. E. 631; *cf.* Tarrt *v.* Negus, *supra*. It would seem, however, that policy is against the state imposing the marriage status without actual consent of the parties.

[20] The disability was caused by the fact that the woman had a husband living and her divorce from him in California was not recognized in New York. O'Dea *v.* O'Dea, 101 N. Y. 23, 4 N. E. 110. The California divorce was valid in Illinois, however. Knowlton *v.* Knowlton, 155 Ill. 158, 39 N. E. 595. This is one of the peculiar situations made possible by the decision of Haddock *v.* Haddock, 201 U. S. 562, 26 Sup. Ct. Rep. 525.

[21] State *v.* Thompson, 76 N. J. L. 197, 68 Atl. 1068.

[1] Munn *v.* Illinois, 94 U. S. 113.

[2] 2 WYMAN, PUBLIC SERVICE CORPORATIONS, § 1402 *et seq.*

[3] Railroad Commission Cases, 116 U. S. 307, 331, 6 Sup. Ct. 334.